



13 August 1984

MEMORANDUM FOR: General Counsel

FROM: Executive Assistant to the DDCI

SUBJECT: Response to Chairman, SSCI's Letter,
dtd 10 Aug 84 (attached)

The DDCI would like you (OGC in coordination with OLL) to prepare a response including the following points:

- position in the DDO was created to ensure that legal advice was an integral part of policy formulation in the DDO.
- Person in this position reports to the General Counsel as do all our lawyers.

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Nothing legalese, please -- polite but direct and to the point.

Thank,

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Attachment

cc: ExDir (for information)
DDO (for information)
✓ O/OLL (for coordination)

DCI
EXEC
REG

BARRY GOLDWATER, ARIZ., CHAIRMAN
DANIEL PATRICK MOYNIHAN, N.Y., VICE CHAIRMAN
JAKE GARN, UTAH
JOHN H. CHAFEE, R.I.
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JOSEPH R. BIDEN, JR., DEL.
DANIEL K. INOUE, HAWAII
PATRICK J. LEAHY, VT.
LLOYD BENTSEN, TEX.
SAM NUNN, GA.

United States Senate

SELECT COMMITTEE ON INTELLIGENCE

WASHINGTON, D.C. 20510

HOWARD H. BAKER, JR., TENN., EX OFFICIO
ROBERT C. BYRD, W. VA., EX OFFICIO

ROBERT R. SIMMONS, STAFF DIRECTOR
GARY J. SCHMITT, MINORITY STAFF DIRECTOR

#84-2759

August 10, 1984



The Honorable William J. Casey
Director of Central Intelligence
Central Intelligence Agency
Washington, D.C. 20505

Dear Bill:

Thank you for your letter of July 26, 1984, regarding the appointment of [redacted] to be Deputy Director of the CIA's Office of Legislative Liaison and the reassignment of [redacted] to be "Counsel to the Directorate of Operations."

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I know that [redacted] has had prior experience in legislative liaison work, particularly in connection with Intelligence Community budget matters. This should prove to be extremely valuable. I congratulate you on what appears to be an excellent appointment.

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Also, I am pleased with the selection of [redacted] and am happy to know that he will continue to be involved in the effort to enact S. 1324, our FOIA bill. [redacted] has rendered yeoman service in this area. I know that he is eminently qualified for his new position. However, this appointment does give rise to some concerns which I want to share with you.

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Bill, concern about maintaining a strong Office of General Counsel at the Agency dates back to the Rockefeller Commission. I think it is very important that the CIA not create the perception that the Directorate of Operations is seeking to function without the benefit of legal advice from the General Counsel. The Committee staff has been assured informally that the intent is to have [redacted] report directly to, and be guided by the legal views of, the

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The Honorable William J. Casey
August 10, 1984
Page Two

General Counsel. If this is the case, I see no problem, and I would only suggest that this crucial relationship be made explicit in any announcement or comment that the Agency might make on the appointment. The last thing we need right now is to resurrect an issue that was laid to rest years ago.

Sincerely,

A handwritten signature in dark ink, appearing to read "Barry", written over the printed name.

Barry Goldwater
Chairman

Central Intelligence Agency



Washington, D.C. 20505

26 JUL 1984

The Honorable Barry M. Goldwater
Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is to advise you that [redacted] the Deputy Director of the Office of Legislative Liaison, has been reassigned to be Counsel to the Directorate of Operations.

The new Deputy Director of the Office of Legislative Liaison will be [redacted] who is currently the Chief of the Audit Staff.

As you know, [redacted] has been working hard for many months to help the SSCI to craft legislation to provide some urgently needed relief to the CIA from the current problems we face under the FOIA. Since the CIA Information Act appears to be well along toward enactment, I have asked [redacted] to continue to work with the SSCI and the other concerned committees in both Houses to see this Bill through the final phases of the legislative process. I understand that chances are still very good that the CIA Information Act will pass before the adjournment of this Congress, and I appreciate your continued support for this much needed legislation. This letter is also being provided to Vice Chairman Moynihan.

Sincerely,

/s/ William J. Casey
William J. Casey
Director of Central Intelligence

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(LEG, GEN)

C/legislation

Central Intelligence Agency



Washington, D.C. 20505

10 August 1984
OLL 84-2730

Mr. Robert R. Simmons
Staff Director
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Dear Rob:

I gather from continuing conversations between our two staffs that some ambiguity remains with respect to [redacted] assignment and title in the Directorate of Operations.

STAT

To attack the issue directly, it does not mean that the DDO now has his own General Counsel, separate and apart from the Office of the General Counsel. Official Agency legal opinions can and will only come from the Agency's Office of the General Counsel.

Since the mid-1970's, the General Counsel has had one of his lawyers detailed to the DDO to assist in day-to-day deliberations and counsel regarding Executive Order guideline implementation, FOIA and Privacy Act responses and the like. As you know, for the past several years, [redacted] was the assigned lawyer. [redacted] will take over from [redacted] who has been reassigned.

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Given [redacted] grade and experience, we considered it appropriate to give him the title of Counselor to the DDO.

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Sincerely,

[redacted]

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Charles A. Briggs
Director, Office of Legislative Liaison

Distribution:

Orig - Addressee

1 - Clair George, DDO

1 - Stan Sporkin, GC

1 - [redacted] CDO/OGC

1 - D/OLL Chrono

1 - DD/OLL

1 - C/Liaison/OLL

✓ 1 - C/Legislation/OLL

1 - OLL Subject

1 - OLL Chrono

D/OLL:CABriggs;jms (10 Aug 84)

STAT

Central Intelligence Agency



Washington, D.C. 20505

10 August 1984
OLL 84-2731

Mr. Thomas K. Latimer
Staff Director
Permanent Select Committee
on Intelligence
House of Representatives
Washington, D.C. 20515

Dear Tom:

I gather from continuing conversations between our two staffs that some ambiguity remains with respect to [redacted] assignment and title in the Directorate of Operations.

STAT

To attack the issue directly, it does not mean that the DDO now has his own General Counsel, separate and apart from the Office of the General Counsel. Official Agency legal opinions can and will only come from the Agency's Office of the General Counsel.

Since the mid-1970's, the General Counsel has had one of his lawyers detailed to the DDO to assist in day-to-day deliberations and counsel regarding Executive Order guideline implementation, FOIA and Privacy Act responses and the like. As you know, for the past several years, [redacted] was the assigned lawyer. [redacted] will take over from [redacted] who has been reassigned.

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Given [redacted] grade and experience, we consider it appropriate to give him the title of Counselor to the DDO.

Sincerely,

[redacted]

STAT

Charles A. Briggs
Director, Office of Legislative Liaison

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1 - C/Liaison/OLL

1 - C/Legislation/OLL

1 - OLL Subject

1 - OLL Chrono

D/OLL:CABriggs;jms (10 Aug 84)

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OLL 84-2826
7 August 1984Good wrapping?
~~10 AUG 1984~~
10 AUG 1984

MEMORANDUM FOR: Director, Office of Legislative Liaison
Deputy Director, Office of Legislative Liaison

FROM: Legislation Division *SH*
Office of Legislative Liaison

SUBJECT: Legislative Developments in 98th Congress and
Outlooks for 99th Congress

OVERVIEW

The Legislation Division was successful in achieving a number of legislative objectives in the 98th Congress. The major legislative initiative of this Office during this Congress has been the effort to obtain relief for the Agency from the Freedom of Information Act. We are guardedly optimistic that we can obtain passage of the FOIA bill during this legislative session. Even if we fall short of this goal, we still have made significant progress towards enactment of this legislation in the 99th Congress. The Division was also successful in continuing to secure amendments to legislation which otherwise would have adversely impacted the Intelligence Community, particularly in the context of the 1984 State Department Authorization Act. The annual Intelligence Authorization Acts have continued to be utilized as vehicles for obtaining enhancements of Agency and Intelligence Community statutory authorities. Unfortunately, both the 1984 and 1985 Intelligence Authorization Bills became embroiled in a partisan debate over the Administration's policies in Central America.

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[REDACTED]

[REDACTED] In the 99th Congress, the major issues will include supplemental retirement legislation, [REDACTED] and covert action in general, and if it does not pass this Congress, relief from the Freedom of Information Act. [REDACTED]

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FOIA RELIEF LEGISLATION

The major legislative initiative of this Office has been the effort to obtain relief from the FOIA. This effort actually began several years ago, but it was only during the past year that major strides were made toward enactment of this legislation. The first milestone occurred last year when attorneys from this Office, after intensive negotiations, reached an agreement in principle with the ACLU over the types of Agency records that should be exempt from the FOIA and the limited circumstances under which exempted records would nevertheless be searched. Senator Goldwater then introduced legislation which reflected this agreement. A hearing was held by the SSCI in June of 1983 at which time the DDCI presented the Agency's case. Following the hearing, the Office prepared answers to over 100 follow-up questions and participated in the drafting of the Committee report to accompany the bill. Attorneys from this Office also worked closely with the staff of the SSCI in modifying certain provisions of the bill to satisfy the concerns of key Senators on the SSCI. All these efforts paid off when the SSCI in October unanimously reported out a modified version of the original Goldwater bill. While the ACLU did indicate general support for the Goldwater bill, they promised to attempt to "improve" the bill when it reached the House. In November the bill was unanimously passed by the Senate. [redacted]

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In the House, several Congressmen introduced legislation similar to that which was passed in the Senate. A hearing was held by the HPSCI in February on these bills, and the DDCI again made a strong plea for enactment of FOIA relief legislation. Following the hearing, attorneys from this Office met with representatives of the ACLU and HPSCI staff in an effort to reach an agreement over the specific formulation of the bill and accompanying report. After intensive negotiations, an agreement was reached and the HPSCI unanimously reported out an amended bill on 1 May and referred it to the House Committee on Government Operations for further consideration. On 10 May, the Executive Director presented the Agency's case at a hearing on the FOIA relief bill held by the Subcommittee on Information, Justice and Agriculture of the House Government Operations Committee. Although the hearing went well, the Chairman of that Subcommittee, Glenn English, decided to hold up consideration of our bill because of the adverse publicity surrounding CIA [redacted]

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[redacted] and concern that CIA would abuse the authority to withhold records created by the bill. After meeting with the DDCI, Congressman English was finally persuaded to take action on our bill. On 25 July, his Subcommittee recommended full Committee approval of the bill. Favorable action by the full Government Operations Committee occurred on 31 July. It is

expected that the bill will reach the full House for consideration during the week of 10 September. [REDACTED]

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In sending the FOIA relief bill to the House floor, Congressman English attached an unrelated amendment that could jeopardize enactment of our bill. This amendment would prohibit the government from using the Privacy Act to justify withholding records requested under the FOIA. Since the Agency has never withheld records pursuant to this justification, this Agency would not be affected by Congressman English's amendment. The DOJ, however, has used this argument to withhold records requested under the FOIA ; they have indicated to us that they would be willing to torpedo the entire bill, rather than have the English amendment enacted into law. When the House version of the FOIA relief bill reaches the Senate, there is a distinct possibility that Senators sympathetic to the DOJ position will prevent the bill from being considered under the unanimous consent procedure of the Senate. Because of the rush of other business at the end of the Session, this will probably ensure the death of the FOIA relief bill for this Congress. To avoid this possibility, it will be necessary for the DCI to secure agreement from the Attorney General not to seek to kill the FOIA relief bill. Should such an agreement not be forthcoming, the option does exist to appeal the issue to the President. [REDACTED]

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While this Office remains cautiously optimistic on the prospects of passage of our FOIA relief bill, there is a possibility that we will fall just short of our goal. If enactment of this relief legislation does not occur this year, the Agency will attempt to secure passage in the next Congress. In view of the bipartisan consensus on the need for this legislation, there is a strong probability that the Agency will be successful in the next Congress. [REDACTED]

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In the fall of 1983, Rep. Wyche Fowler introduced three bills that addressed the subject of congressional oversight of Agency covert action activities. These bills attempted to establish more detailed statutory standards that the President must meet before initiating such activities, and would have provided the two Intelligence Committees with veto authority with respect to major covert actions undertaken by the Agency. A broad range of witnesses testified in opposition to these bills and no action was taken with respect to these initiatives during this Congress.

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INTELLIGENCE AUTHORIZATION ACT

During the 98th Congress, the Agency was successful in utilizing the annual authorization process as a vehicle for expanding and improving various Agency and Intelligence Community authorities. [REDACTED]

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- a) Fiscal Year 1984 Act (P.L. 98-215). The Intelligence Authorization Act for fiscal year 1984 became law on 9 December 1983. The legislation provided funding for the design and construction of the new Headquarters building and authorized appropriations to pay for the construction of highway improvements associated with the new building. The legislation also eliminated the senior military billet allocation problem with respect to the ICS by providing that the rank and grade of any senior armed forces officer appointed Director or Deputy Director of the Intelligence Community Staff would be in addition to the number and percentage otherwise authorized for the service of which he is a member. This legislation also authorized the Agency to set minimum and maximum age limits for appointment to operational positions within the Agency. The legislation contained provisions which expanded the eligibility for Agency incentive awards to military detailees and provided increased benefits for certain DIA personnel. [REDACTED]

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In addition, the Agency in conference will support the House provision addressing the Agency's assumption of the GSA security function since the House bill provides these protective authorities directly to the Agency unlike the Senate bill, which requires GSA to delegate these authorities to CIA prior to their exercise by Agency personnel. The Agency also will support the Senate provisions addressing the promotion of the DCI and DDCI and the increased personnel administrative authorities provided to DIA. With respect to the Senate proposal concerning diplomatic reciprocity and equivalence, the Agency up to this point has deferred to State Department on this provision. The State Department has been successful in seeking an amendment to this provision from the Senate Foreign Relations Committee which removes the mandatory requirement for equal numbers in diplomatic

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presence and instead allows the President greater flexibility in seeking "substantial equivalence" in the numbers and treatment of U.S. and foreign diplomatic personnel. [REDACTED]

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- c) Fiscal Year 1986 Bill. Legislation Division just recently provided both Intelligence Community representatives and internal Agency components with a copy of the legislative program for the first session of the 99th Congress and requested comments on this program and additional proposals for inclusion therein. The legislative program includes initiatives which will be pursued primarily in the context of the 1986 Intelligence Authorization Act, although these same proposals also can be submitted as free-standing legislation after they receive OMB approval. The legislative program presently contains a number of proposals which may become law as part of the 1985 Intelligence Authorization Act, including the promotion of the Director and the Deputy Director and increased personnel management authorities for DIA. Also included in the program are certain long term initiatives such as Agency relief from FOIA and the Intelligence Personnel Protection Amendment which may become law during the current Congress. All the above initiatives will likely be pursued in the 99th Congress if they are not enacted during this session. Certain other proposals addressing domestic relocation allowances and elimination of penalties for mandatory retirement of Agency employees prior to age 62 will have to be reconsidered in light of recently enacted legislation before a decision is made as to whether to seek affirmative legislation in these areas. Other initiatives concerning amendments to the Classified Information Procedures Act, a proposal to remove impediments to naturalization of individuals contributing to the national intelligence mission, and proposals designed to provide additional criminal and civil penalties for willful unauthorized disclosures of classified information will have to be closely coordinated within the Administration, particularly with the Department of Justice, before any decision is made as to whether to seek the enactment of such initiatives in the next Congress. [REDACTED]

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CONGRESSIONAL OVERSIGHT PROCEDURES WITH RESPECT TO AGENCY COVERT ACTION.

In response to the SSCI's concern over the adequacy of Agency reporting on covert action [REDACTED]
[REDACTED]

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[redacted] the SSCI proposed that a formal set of reporting procedures should be drafted which would address Agency reporting on covert action. An initial draft by the Committee of these covert action procedures was received by the Agency on 30 April 1984, and a hearing was held before the full Committee on this subject on 3 May. The Agency representatives present at the 3 May hearing stated the Agency's approval for the substance of these procedures and during the next month a final draft of these proposals was reached in a series of negotiations conducted by SSCI and Agency representatives. As finally agreed to, these procedures describe certain types of activities undertaken within an already reported finding which should require additional notification of SSCI. The types of activities described in the procedures generally relate to activities which either substantially change the scope of the covert action program, which have a significant flap potential, or which require higher level (i.e. Presidential or NSPG) approval. Also included as part of the SSCI agreement was an understanding that the Agency would implement internal procedures which would ensure that a regular and continuing review of Agency covert actions was undertaken to identify potentially controversial or otherwise significant actions which should be reported to the SSCI under these procedures. After several drafts, these internal procedures have now been agreed to by OLL, OGC, and the DO and have been forwarded to the DCI for review. These procedures would establish various responsibilities in EPS/DO, the General Counsel's office and this Office to monitor ongoing covert actions and to bring significant activities to the attention of the DDO and DCI for a decision as to whether higher level approval should be sought or the Committee should be briefed concerning such actions. [redacted]

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In addition to the SSCI's covert action reporting procedures, the Agency received an initial draft of HPSCI's proposed procedures in this regard on 1 June 1984. An initial hearing on these procedures scheduled for 6 June 1984 was cancelled as the Committee decided that these procedures could be informally negotiated by staff and then transmitted in the form of a letter addressed to the DCI from Chairman Boland and Ranking Minority Member Robinson. A second draft of the HPSCI procedures was received by the Agency on 21 June, and this redraft set out a series of examples of activities undertaken pursuant to an already approved and reported finding which HPSCI believes should require notice and explanation to the Committee. The types of activities under the HPSCI proposal requiring timely notification are essentially the same as those contained in the SSCI agreement. Comments concerning the HPSCI procedures have been received from both OGC and DO and a meeting was held on this subject on 30 July to discuss recommended revisions. Given the fact that these revisions did not contain any major substantive modifications in the HPSCI

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procedures, it is hoped that a final HPSCI letter containing an agreed set of procedures can be agreed to without the need for any formal document to be issued or signed by HPSCI or the DCI. [REDACTED]

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PERSONNEL-RELATED LEGISLATION

Supplemental Retirement Legislation

The Social Security Amendments of 1983 provided that all federal employees hired after December 31, 1983, will be covered by the Social Security retirement system. To alleviate the burden of new federal hires paying into both the Social Security and the Civil Service retirement systems, the Congress passed the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (FERCTA). This act provided that new federal employees would pay 6% into Social Security and only 1.3% into their Civil Service retirement system. Thus all federal employees would be treated equally regarding their retirement contribution level (pre-'84 employees pay 6% to Civil Service and 1.3% to Medicare). This adjustment is temporary, however, and expires at the earlier of the enactment of a new supplemental retirement system for federal employees or 1 January 1986. [REDACTED]

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A new federal retirement system has been discussed for some time. In the 97th Congress, Senator Ted Stevens, Chairman of the Senate Committee on Governmental Affairs, introduced legislation to establish a new three tier federal retirement system covering new federal employees and open to current federal employees by election. The first tier of this system was mandatory Social Security coverage for federal employees. The second tier was a defined contribution plan whereby the Government would contribute a fixed amount based on the employee's salary. The third tier was a voluntary thrift plan in which the employee could contribute any amount and the Government would match that amount 100% up to 3% of salary. This bill was not enacted in the 97th Congress but has served as a prototype for the supplemental retirement system anticipated under the FERCTA. [REDACTED]

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Senator Stevens and Chairman Ford, of the House Post Office and Civil Service Committee, have taken the lead in formulating the supplemental retirement system in the 98th Congress. The current thinking is that the supplemental retirement system will consist of a three tier system with Social Security, a defined benefits plan and a thrift plan. The Cost of Living Allowances (COLA) and the normal retirement age have yet to be resolved. It is possible that the new system will accommodate the early retirement needs of "special pay" category employees

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(law enforcement, firefighters, CIA, and Foreign Service personnel) at little or no additional cost. Present indications are that this additional cost, if any, for early retirement would most likely be half-COLA's for the employee from retirement to age 62 (Social Security eligibility date). [redacted]

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While it is clear that no supplemental retirement legislation will pass this year, we should be prepared next year to work for a supplemental retirement package that will meet the needs of the CIA in recruiting and retaining a high calibre, young workforce. Chairman Ford plans to hold hearings in February or March of 1985 concerning the recruitment and retention problems agencies will face under the new retirement system. We can be sure that the Director will be asked to testify at these hearings. [redacted]

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Domestic Relocation Legislation

Senator Warner and Representative Wolf sponsored an amendment to the 1983 Continuing Resolution to increase the domestic relocation benefits available to civilian federal employees. This Warner/Wolf domestic relocation amendment increased the maximum weight for shipment of household goods, doubled the time during which a temporary quarters allowance may be provided, and increased the reimbursable amount for the expenses of the sale or purchase of a residence. In addition to these enhancements of existing relocation entitlements, the Warner/Wolf amendment added two new entitlements: income taxes reimbursement and commercial relocation services. [redacted]

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Our office has worked with the Office of Personnel to assist the General Services Administration (GSA) in the promulgation of implementing regulations that will permit maximum benefit to the Agency. GSA has already implemented the enhancements to existing relocation entitlements, but has not yet issued regulations implementing the new benefits. After GSA issues its regulations implementing the new tax reimbursement and relocation services provisions, the Agency will review the adequacy of the improvements made by the Warner/Wolf legislation and may decide to seek separate legislative or administrative relief to solve the Agency's relocation difficulties. [redacted]

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Former Spouse Legislation

The CIA Spouses' Retirement Equity Act of 1982 provided benefits to former spouses of CIARDS participants who were divorced after the effective date of that act, 15 November 1982. Legislation was recently introduced that would extend benefits to qualified former spouses divorced prior to the

effective date of that act. This legislation, H.R. 5805, was introduced by Congressman Romano L. Mazzoli and was referred to the House Permanent Select Committee on Intelligence (HPSCI). Hearings on H.R. 5805 are scheduled for 12 September 1984. The Agency has been asked to provide a witness. [redacted]

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H.R. 5805 would provide a prescribed lifetime annual benefit of approximately \$7,400 to qualifying former spouses that would be payable from Treasury funds. A qualifying former spouse is one who has been married to a CIA officer for not less than 10 years during periods of service by the officer with the Agency, at least five years of which were spent outside the U.S. by both the employee and the former spouse. If the former spouse remarries before age 60, the annuity would cease until the remarriage is terminated by death or divorce. A former spouse would not be eligible for benefits if a lump sum payment had been paid unless the former spouse returns such payment. [redacted]

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H.R. 5805 would also enable qualified former spouses of CIA employees to participate in the Federal Employees Health Benefits Program (FEHBP). Such individuals would be given the opportunity to enroll in a health plan provided they pay an amount equal to the sum of the employee and Government contributions to the FEHBP fund. [redacted]

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In addition to H.R. 5805, legislation also has been introduced in Congress that would extend benefits to former spouses of employees under the Civil Service retirement system. S. 1930/H.R. 2300 (Durenberger/Schroeder) and S. 2821 (Mathias) would provide only a survivor benefit to the former spouse of a Civil Service employee. S. 2821 also would permit former spouses to join FEHBP if they contribute the full subscription rate. Hearings on S. 2821 are scheduled for 1 August 1984. Although the Agency has not been requested to participate in these hearings, we have contributed our views to the Administration's position (i.e. the Office of Personnel Management's position) on these bills and will continue to monitor their progress. [redacted]

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It is unlikely that there will be significant progress on H.R. 5805, S. 1930/H.R. 2300 or S. 2821 during this Congress. However, due to the persistency of this issue and the lobbying of affected former spouses, we can be sure that similar legislation will move forward in the next Congress. [redacted]

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Intelligence Personnel Protection Legislation

Our major initiative in this area is S. 779, the "Intelligence Personnel Protection Act." This bill would amend 18 U.S.C §1114 to include probation officers and intelligence

personnel within the scope of the general federal law criminalizing the manslaughter of federal officers. S. 779 was introduced by Senator Biden on 11 March 1983 and was referred to the Committee on the Judiciary. The Senate Judiciary reported S. 779 favorably on 19 October 1983, and the Senate considered and passed S. 779 on 18 November 1983. []

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In the House, S. 779 was referred to the Subcommittee on Criminal Justice of the House Judiciary Committee. Hearings were held on S. 779 as well as two other bills in March of 1984. [], Director of the Intelligence Community Staff, spoke on behalf of the Intelligence Community at these hearings. []

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In addition to S. 779, two other bills are pending before the House Judiciary Committee that contain language that would protect intelligence personnel. Parts G and K of Title X of S. 1762 would amend the federal criminal laws to protect not only intelligence personnel, but also their families. H.R. 5150, the Federal Officials Protection Act of 1984, would provide similar protection for intelligence personnel but would also require a major restructuring of the relevant provisions of Title 18. []

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It is difficult to predict whether the House Judiciary Committee, not to mention the House, will act upon any of these three pieces of legislation before the end of this Congress. Our best hope is that they will pass S. 779 or amend S. 779 in the nature of a substitute with the text of H.R. 5150. In this way we could enhance our chances of passage of favorable legislation this year. []

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Federal Employee Health Benefits Program

Several bills were introduced in this Congress with the aim of modifying the Federal Employees Health Benefits Program (FEHBP). These bills were introduced in part to respond to the complaints of insurance companies that the present FEHBP premium contributions were inadequate to cover the benefits provided. A listing of the major FEHBP bills introduced in the 98th Congress:

S. 537 (Nunn) -- liberalizes rules on transferring between health plans to enhance competition;

S. 1685 (Durenberger) -- modifies benefit levels for government-wide plans and indexes Government contribution to the CPI for Medical Costs;

S. 2027 (Stevens) -- modifies benefits and types of plans offered, and increases government contribution to 70%;

H.R. 656 (Oakar) -- extends coverage and increases Government contribution rate to 75%; and [redacted]

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H.R. 3798/S. 2252 (Dannenmeyer/Hatch) -- institutes the OPM voucher system for reimbursing federal employees to join any State-licensed health plan. [redacted]

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Several of these bills involved modifications to the audit and review standards of health plans. Consequently, our interest in these bills involved not only the level of benefits provided to Agency employees, but also the ability of Agency employees to participate in these plans consistent with the requirements of cover and security. As a result of these audit and review modifications, the Office of Personnel began exploring the option of withdrawing the Agency's health plan from the FEHBP and administering an internal health benefit program in its place. [redacted]

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Passage of FEHBP legislation during this Congress is unlikely. Apparently as a result of improved OPM administration of existing plans, insurance companies have withdrawn their pressure for modification of the present FEHBP. It is quite possible that this issue will not arise again in the 99th Congress, although activity in this area could result as a spin-off from Congressional interest in the federal retirement area. [redacted]

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PREPUBLICATION REVIEW AND POLYGRAPH USAGE BY THE GOVERNMENT

National Security Decision Directive 84 was issued in March of 1983 by President Reagan and directed Executive Branch agencies to take certain steps to more effectively prevent the unauthorized disclosure of classified information. Two of the requirements contained in NSDD-84 concerning the expanded use of secrecy agreements to require individuals provided with access to classified information to agree to a prepublication review of subsequent writings, and the increased use of polygraph examinations in the investigation of unauthorized leak cases, proved to be controversial and attracted considerable Congressional attention. Hearings on the need for and effects of NSDD-84 were held before the Senate Committee on Governmental Affairs and the House Government Operations' Subcommittee on Legislation and National Security in the fall of 1983. In addition, an open joint hearing on the related subject of unauthorized leaks was held before the House Judiciary Civil and Constitutional Rights Subcommittee and the Subcommittee on Civil Service of the House Post Office and Civil Service Committee in the spring of 1983. An additional joint closed session on this same subject was held before these two committees in February of 1984. [redacted]

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To ensure that Congress had an adequate opportunity to consider and respond to NSDD-84, Congress undertook certain actions designed to delay the implementation of the above two provisions contained in NSDD-84. The 1984 DOD Authorization Act included a provision which limited the use of the polygraph at DOD until 15 April 1984 to that use permitted by regulation of the Department in effect as of 5 August 1982. A limited exemption from this provision was provided for the National Security Agency. The Act also required the Senate Committee on Arms Services and the Senate Select Committee on Intelligence to hold hearings on this subject of polygraph use in the DOD prior to the above 15 April 1984 date. In addition, the 1984 State Department Authorization Act contained a provision which prohibited any government agency, before 15 April 1984, from enforcing or issuing any rule or regulation relating to prepublication review which differed from any rule or regulation in effect on 1 March 1983. The intention of both of these limitations was to restore the status quo that existed before NSDD-84, so that Congress could adequately study the purpose and effect of these new provisions and consider further actions that might be required in this regard. [REDACTED]

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In addition to the above provisions temporarily delaying the implementation of the polygraph and prepublication review provisions contained in NSDD-84, Chairman Brooks of the Legislation and National Security Subcommittee of the Committee on Government Operations, introduced H.R. 4681, the "Federal Polygraph Limitation and Anti-Censorship Act of 1984" in January of 1984. This bill would permanently restrict the government's use of prepublication review and polygraph examinations by providing that, with the exception of CIA and NSA, federal agencies may not require employees to take polygraph examinations except on a voluntary basis as part of a specific investigation into alleged criminal conduct, may not require employees (except at CIA and NSA) to enter into prepublication review agreements, and are required to rescind any such agreements (except at CIA and NSA) entered into prior to the effective date of this legislation. H.R. 4681 was referred to Representative Schroeder's Subcommittee on Civil Service of the Committee on Post Office and Civil Service. Negotiations were entered into during the spring and summer of 1984 between this Subcommittee, HPSCI and concerned federal agencies in an attempt to reach a compromise that would broaden the exemption provided only to NSA and CIA in the bill. While certain amendments to the original Brooks bill were agreed to by Representative Schroeder and were incorporated into her own bill (H.R. 5866) on this subject, the Schroeder amendment did not contain any real substantive differences from the original Brooks bill or otherwise expand the limited exemption afforded NSA and CIA in that bill. The House Committee on Post Office and Civil Service on 27 June 1984 marked up H.R. 4681,

substituting Rep. Schroeder's amendment (H.R. 5866) for the original Brooks bill and reporting this amended bill out of Committee without any further revision or changes. Both the HPSCI and the House Armed Services Committee have requested sequential referral of this bill. After the Post Office and Civil Service Committee prepares and issues its report on H.R. 4681, HPSCI has requested 20 legislative days in which to consider the bill. Given the length of time that the preparation of this report and the subsequent referral of the bill to HPSCI and HASC will entail, floor consideration of the bill by the entire House is possible but its passage this session by both Houses is very unlikely. [REDACTED]

25X1

With respect to the outlook in the next session for H.R. 4681 and similar bills, the Administration has indicated to Rep. Schroeder in a 20 March 1984 letter that it wishes to work cooperatively with Congress to develop a mutually acceptable solution to the problem raised by the controversial provisions contained in NSDD-84. Mr. McFarlane in this letter assured Rep. Schroeder that neither the prepublication review nor polygraph provisions will be reinstated during the current session of Congress, and that Congress will be notified at least 90 days in advance of any plans to revive these provisions in the next session. Given the fact that both the House Committee on Government Operations and the Senate Committee on Governmental Affairs have held hearings and issued critical reports on the utility and efficacy of prepublication review and polygraph usage, it can be expected that Rep. Brooks and Senator Mathias will introduce measures similar to H.R. 4681 early in the next session of Congress. Rep. Brooks has repeatedly indicated that he does not view the temporary withdrawal of NSDD-84 as definitively addressing his basic concern that any Government use of polygraph and prepublication review is improper and intolerable. Given the breadth of the government's current use of these two tools, Rep. Brooks will certainly seek a permanent prohibition on their use similar to that contained in H.R. 4681 in the next Congress. [REDACTED]

25X1

On the positive side, the Agency participated in an extremely successful hearing on the subject of polygraph usage by the Intelligence Community before the SSCI, and has generated considerable support among SSCI members for its current polygraph program. HPSCI's support for the Intelligence Community's use of these two tools is divided along party lines. The HPSCI minority is very supportive of the Intelligence Community and of preserving the status quo with respect to the use of these two tools. The HPSCI majority, on the other hand, will likely support the Brooks bill limitations on prepublication review and will expand the exception for polygraph use only to DOD, FEMA, and State Department for a limited number of individuals and a two year

period. There is a possibility that HPSCI may hold hearings on the subject of polygraph usage sometime in the next few months to more sharply crystallize its position on these issues. Our efforts next Congress should be devoted to enlisting the support of our oversight committees to effectively contain the Brooks bill and similar initiatives which attempt to further limit prepublication review and polygraph usage by the federal government. [REDACTED]

25X1

NARCOTICS

Concern has been expressed in Congress that there has been insufficient coordination among Federal agencies involved in detecting and apprehending drug traffickers. This concern has led to the introduction of several bills which would create a so called "Drug Czar", who would coordinate the narcotic activities of various Federal agencies. Last February, the Senate passed a bill, introduced by Senator Biden, that would make the Attorney General the "Drug Czar." Although the White House has opposed the concept of a Drug Czar, and in fact vetoed a similar bill last year, the Department of Justice has supported Senator Biden's bill because the Attorney General would be the "Drug Czar." The DDCI has gone on record with OMB and the DOJ as opposing the Senate Bill because it could seriously and adversely affect (1) the DCI's responsibilities to protect intelligence sources and methods, (2) his responsibilities in connection with the Intelligence Community budget and (3) his equities regarding the assignment of Intelligence Community personnel. In response, the DOJ has stated that they do not share our concerns and that they object to attempts by the Agency to modify the bill to alleviate Agency concerns. Since the prospect for enactment of the Biden bill in the House appears to be poor at the moment, the Agency has deferred attempting to amend the bill. However, should the Biden bill begin to move in the House, the Agency may have to raise its concerns directly with the Attorney General or the President. In the meantime, this Office and OGC intend to continue to negotiate with the DOJ in an attempt to reach an Administration position that will accommodate intelligence concerns. [REDACTED]

25X1

TERRORISM

The Administration recently transmitted to Congress four legislative proposals designed to combat international terrorism. This Office reviewed these proposals prior to their transmittal to Congress and suggested several changes needed to protect Agency equities. These changes were incorporated into the legislative package sent to the Hill. A fifth proposal,

which would have imposed criminal penalties for conspiring to murder, kidnap, or maim an individual outside of the United States, was never sent to the Hill. This proposal was dropped after this Office and OGC pointed out that paramilitary covert actions sometimes result in personal injury of the type addressed in the Administration proposal. Prospects for enactment of three of the Administration's proposals during the remainder of this Congress are fair. These proposals would implement the international conventions against hostage taking and airplane hijacking and sabotage, and would establish a reward for individuals providing information on terrorist activities. The fourth proposal, which would impose criminal penalties on individuals who provide material assistance to governments engaged in international terrorism, is controversial, and prospects for enactment of this proposal during the remainder of this Congress are dim. If President Reagan is re-elected, this proposal on aid to governments engaged in state sponsored terrorism will be resubmitted next year. [REDACTED]

25X1

EXPORT ADMINISTRATION ACT OF 1984

The Export Administration Act (EAA), which controls the export of U.S. high technology items, is up for renewal. Both the House and the Senate have passed different versions, and a House-Senate conference committee is currently trying to resolve those differences. The House bill would remove national security controls on the export of goods to western nations and thus greatly weaken the U.S. Government's ability to stem the tide of high technology items reaching the Soviet Union. The Senate bill would maintain national security controls and that bill is favored by the Administration. This Office and the Technology Transfer Assessment Center (TTAC) have worked closely with the DOD and with the minority staff on the House Foreign Affairs Committee in an attempt to convince the House of the wisdom of maintaining national security controls on the export of goods to western countries. Particular emphasis has been given to the role the Soviets play in the diversion of western technology to the Soviet Union. As of this point, it is doubtful that the House-Senate Conference Committee will be able to reach an agreement. If no agreement is reached, the Congress will probably extend the expiration date of the current law and any amendments to the Export Administration Act will have to wait until the next Congress. [REDACTED]

25X1

25X1

S E C R E T

25X1

WIRETAPPING LEGISLATION

In the wake of press reports that USIA Director Charles Z. Wick had frequently recorded his phone conversations without the knowledge of the caller, several bills, known as "Wick bills," were introduced to prohibit this practice. All but one of these bills sought to criminalize the recording or monitoring of telephone conversations without the consent of all parties to the conversation except in limited situations. Although these bills do contain exemptions for certain intelligence activities, these exemptions do not go far enough to cover the range of CIA activities that are currently permitted by law. Because of the obvious risk to Agency equities and personnel, our office has been working with OGC, other members of the Intelligence Community and the Department of Justice (DOJ) to ensure that all intelligence activities are adequately protected. [REDACTED]

25X1

S E C R E T

Senators Bumpers and Metzenbaum first attempted to have a Wick bill added as an amendment to the Comprehensive Crime Control Act of 1983 (S. 1762). Working with the National Security Agency (NSA) and DOJ, we expressed the Intelligence Community's objections to this amendment via the Senate Select Committee on Intelligence (SSCI). In part as a result of these efforts as well as the obvious political character of the amendment, the Metzenbaum/Bumpers amendment was defeated on the Senate floor. [REDACTED]

25X1

Following this amendment attempt, five free-standing Wick bills were introduced. Hearings have been held on three of the five bills: S. 2669 (Metzenbaum), H.R. 4620 (Brooks), and H.R. 4826 (Conyers). The Brooks and Conyers bills have been reported from committee. In each case, the views of the CIA and the Intelligence Community in opposition to these bills have been provided to the relevant committees. In the case of the Brooks bill (H.R. 4620), our office worked with NSA to obtain an Intelligence Community "fix." Following the hearings on the Brooks bill, however, DOJ successfully urged that the Administration prevent individual agencies from proposing legislative solutions to specific defects in these bills. This position reflects the desire to thwart passage of any Wick bill by ensuring that major defects remain in these bills. [REDACTED]

25X1

To date, none of these bills has reached the House or Senate floors. However, H.R. 4826, which was reported from House Judiciary in the "clean bill" H.R. 5873, is pending before the House Rules Committee where it may obtain a rule and reach the House floor this session. As noted above, our office has not attempted to amend the current exemption provided in the bill for individuals "engaged in foreign intelligence or counterintelligence work" so as to expand that exemption to ensure protection of all authorized intelligence activities. Consequently, we are working closely with staffers on HPSCI and House Judiciary to monitor H.R. 5873's progress. Our goal is to ensure that H.R. 5873 receives an open rule, if it should proceed that far in the House Rules Committee. An open rule would permit us to offer an Intelligence Community amendment on the House floor. In all likelihood, H.R. 5873 will not obtain a rule from House Rules during this Congress and will die in that committee. [REDACTED]

25X1

Our prognosis is that no Wick bills will be enacted during this Congress. Depending on the political climate after the November elections, it is quite possible that no new Wick legislation will be introduced in the 99th Congress. [REDACTED]

25X1

FEDERAL PROCUREMENT LEGISLATION

During the 98th Congress, the Administration proposed a major legislative package to reauthorize the Office of Federal Procurement Policy (OFPP) and to enhance competition in civilian and military procurement. Initially, the Agency objected to the submission of this package to Congress because the modifications proposed in these bills appeared to impinge upon the special procurement authorities of the CIA (50 U.S.C. 403c & 403j). In a letter to the General Counsel dated 14 July 1982, the Administrator of OFPP, Donald E. Sowle, responded to the Agency's objections and assured him that none of the three bills would have a detrimental impact upon the Agency's special procurement authorities. Following this assurance, the Agency dropped its objections to the submission of these bills. [REDACTED]

25X1

All three of these bills have now been enacted into law. S. 1001, the OFPP Reauthorization Act, provided authority for the continued activities of OFPP to standardize Government procurement practices. Included in this reauthorization bill was authority for the Administrator of OFPP to review and modify individual agency procurement regulations. Based upon our earlier understanding with OFPP as well as a legal interpretation of the scope of this authority, the Agency did not oppose this aspect of the legislation. Nonetheless, during debate on the bill, our office did arrange for the insertion of a floor colloquy that makes clear that OFPP's authority is not intended to derogate from the DCI's authorities. [REDACTED]

25X1

The two administration bills proposing the modification of the civilian and military procurement statutes were combined into the "Competition in Contracting Act of 1983", S. 338. This bill was enacted as an amendment to the "Tax Reform and Spending Reduction Act of 1984," H.R. 4170. [REDACTED]

25X1

The enactment of these major procurement bills indicates that this area should be relatively quiet during the 99th Congress. However, given the Congressional propensity to attack Government procurement practices, we can still expect some procurement legislation next year that could affect Agency equities. Consequently, procurement legislation will require continued careful monitoring during the 99th Congress. [REDACTED]

25X1

LANDSAT COMMERCIALIZATION LEGISLATION

Intelligence Community interests were successfully represented during the negotiation of the bill to authorize the commercialization of the land remote-sensing satellite system (LANDSAT). Originally, the Administration desired to sell the Landsat and meteorological satellite systems. However,

Congress disapproved of this and indicated it would only permit the commercialization of Landsat. Several bills were introduced and proceeded through committee. Intelligence Community concerns with these bills centered on the fact that the bills failed to clearly indicate that the Department of Defense, and not the Department of Commerce, was responsible for the determination of those contract conditions necessary to ensure the national security. After extensive correspondence with the respective committees, our office, working with OGC and the COMIREX staff, succeeded in having suitable language inserted in the conference version of the final Landsat bill, H.R. 5155. [REDACTED]

25X1

STATE DEPARTMENT AUTHORIZATION, FISCAL YEAR 1984

25X1

Senators Hawkins and Percy proposed their "Diplomacy Against Drugs" amendment that would require the cessation of U.S. assistance of any kind whatsoever to any nation that failed to meet projected reductions in narcotics production. Our office worked with the Department of State to achieve the substitution of milder language in lieu of the Hawkins/Percy amendment. Additionally, our office succeeded in having inserted into this amendment an exemption for authorized intelligence activities. [REDACTED]

25X1

Finally, Senator Mathias proposed an amendment freezing implementation of the prepublication review requirements of National Security Decision Directive 84 to that practice in place at agencies as of 1 March 1983. This freeze would last until 15 April 1984 to give Congress time to study the purpose and effect of these new provisions. Agency representatives, together with representatives from DOJ and NSC, met with staff members for Senator Mathias and attempted to persuade them to limit the duration and scope of the amendment. Despite these efforts, this amendment was agreed to and passed as part of the State Authorization Act. [REDACTED]

25X1

NATIONAL ARCHIVES

Legislation was introduced again in the 98th Congress to separate the National Archives and Records Service (NARS) from the General Services Administration (GSA) and make it an independent agency. Bills were introduced in both Houses. We had no objection to S. 905, but the House version, H.R. 3987, had one provision which concerned us. This provision would allow access to, and examination of, agency material for the purpose of determining whether it constituted a record. We wanted language to preserve the DCI's authority to protect sensitive information involving intelligence sources and methods. We stated our concern and provided amendments to resolve this problem in a views letter to Rep. Jack Brooks, Chairman, House Government Operations Committee, submitted to the Office of Management and Budget for clearance in April 1984. OMB informed us in late April that our views letter was not being cleared for transmittal to Chairman Brooks since the Administration was opposed to both bills and wanted to clear only those views letters stating complete opposition to the legislation. [REDACTED]

25X1

Subsequently, the Administration changed its position on the Senate bill, S. 905, and expressed its intention to support the legislation provided certain amendments were made. S. 905 passed the Senate on 21 June 1984. [REDACTED]

25X1

Meanwhile, this Office was working informally with the Minority Counsel of House Government Operations, John Parisi, regarding our concerns. Mr. Parisi agreed with our proposed amendments and said he would work for them with the majority staff. We also informed HPSCI staff of our concerns and they worked with us on another possible amendment. Mr. Parisi informed us yesterday (July 31) that the majority staff has agreed to part of our proposed amendment. After discussions with HPSCI staff, OGC, and Records Management Division in the DDA, as well as the General Counsel, DIA and Legislative Counsel, NSA, it was agreed that acceptance of this portion of our amendment was sufficient to meet the concerns we had. This amendment was part of a package of technical amendments offered by Chairman Brooks when the bill came up for House floor consideration late on 2 August. The amendments were adopted and the bill was passed. House proponents were willing to make various concessions in hopes that the Senate will accept a modified House version and thus avoid a conference. [REDACTED]

25X1